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SPEECH

OF

HON. JOHN V. L. PRUYN,

OF NEW YORK,

IN THE HOUSE OF REPRESENTATIVES, FEBRUARY 24, 1868,

On the resolution reported from the Committee on Reconstruction to impeach the President of the United States of high crimes and misdemeanors in office.

Mr. PRUYN. Before I proceed to the general views which I wish to present I ask the House to consider the circumstances under which this very important subject comes before it.

On the 27th of January last certain papers and documents in regard to the affairs of the southern States were referred to the Committee on the Reconstruction of those States. On the 21st of this month (Friday last) a letter from Mr. Stanton, communicating his removal from office as Secretary of War, was referred to the same committee. On the next day, after a meeting by the committee of one hour only, and that during the sitting of the House, and without leave, as we have been informed by my colleague, [Mr. Brooks, a member of the committee,] the chairman [Mr. Stevens, of Pennsylvania] presented the report now before us. It sets forth the removal of Mr. Stanton by the President without any notice of the documents referred to the committee in January last, and concludes as follows:

"Upon the evidence collected by the committee, which is herewith presented, and in virtue of the powers with which they have been invested by the House, they are of the opinion that Andrew Johnson, President of the United States, be impeached of high crimes and misdemeanors."

And thereupon the committee recommended to the House the adoption of the resolution of impeachment which they presented.

That is all there is of this report; and I venture to say that no deliberative assembly in the world was ever called upon to act on a matter of such grave, such vast importance, on so brief a notice, and on so meager a statement. It seems there was no testimony taken, no inquiry made, no explanation sought for, no notice given to the President of the reference to the committee, or even of the time and place of its brief, irregular session. No despotism could have worked more rapidly, nor could the restraints of constitutional government have been more effectually thrown aside; and this course was followed up in the House. The chairman of the committee, in presenting the report, speaking evidently for the political majority of the House, said:

"It is not my intention, in the first instance, to discuss this question; and if there be no desire on the other side to discuss it we are willing that the question should be taken upon the knowledge which the House already has."

And he stated further—and this I understand not only from what the chairman said, but from the remarks of several gentlemen who advocate impeachment, is the *gravamen* of the charge against the President—to wit, that—

"The fact of removing a man from office while the Senate was in session without the consent of the Senate, if there were nothing else, is of itself, and always has been considered, a high crime and misdemeanor, and was never before practiced."

This brings up in its whole length and breadth, without regard to the tenure-of-office act, the question of the constitutional power of the Executive to remove from office; and I hope to show that in the assertion thus made by the gentleman from Pennsylvania he is entirely mistaken. In the incidental discussion which occurred on Saturday last between the gentleman from Illinois [Mr. Ingersoll] and myself, and in that, also, which took place this morning, this proposition was again put forward, and on both occasions I promptly controverted it. And as it forms the very groundwork on which the superstructure of impeachment has been raised, I had expected it would have been fairly met, but in this I have been disappointed.

The Constitution of the United States declares that—

"The executive power shall be vested in a President of the United States of America."

Such are the exact words of the grant. There it stands in all its length and breadth, to be judged of by its own strong and comprehensive terms. The exercise of the power is, indeed, in some cases, regulated by the Constitution; but where not so regulated it stands in its full, unassailable integrity. A stable government cannot be maintained without ample executive authority to enforce the laws, and the framers of our Constitution clearly intended to vest that power in the President only; and with their great knowledge of the science and principles of Government none knew better than they the necessary and legitimate extent of that power. It may be said it is a great power, and its exercise may be abused. All power, as we well know, may be abused. But when you look at the guards which surround the election of President, the limited term for which he is chosen, his almost direct accountability to the Representatives of the people, the chances of abuse are much less with him than with a Senate composed of a large body of members on whom influences may be exerted in various ways, sometimes without their being aware of it. Indeed, every good appointment to public office made by the President does so much to strengthen and create respect for his administration. The distinguished gentleman from Pennsylvania, [Mr. WOODWARD,] who addressed the House this morning, briefly referred to a discussion in the First Congress on this subject. That discussion, considering the circumstances which attended it, was one of the most important which has taken place in our constitutional history. At least fifteen of the thirty-nine persons who signed the Constitution were members of that Congress. The debate was so thoroughly exhaustive of the subject that even with our experience at this day scarcely anything of importance can be added to it. And I do not hesitate to say that no member of this House should venture to vote in favor of the proposition to impeach the President until he has studied that discussion. It is a case for the President, it is unjust to the great interests involved in this question, that gentlemen should act upon it without the views as to constitutional principles which the debate referred to affords. It will be found reported in the first volume of the Annals of Congress, and I shall refer to it very freely.

By the consent of all parties, from the foundation of the Government down, Mr. Madison's views on constitutional questions have been looked to not only with the greatest respect, but, I may almost say, as conclusive on all controverted points. The prominent part he took in the Convention which formed the Constitution, the clearness, the calmness, and, at the same time, the vigor of his views, his active interest in the adoption of that instrument as evinced in the Federalist, which was so largely written by him, and in the councils of his own State, all combined to give him this position.

The debate of 1789 took place on the bill organizing the Department of Foreign Affairs, afterward called the Department of State. The first section of the bill, as reported, provided for the appointment of the officer named, "to be removable from office by the President of the United States;" and this brought up the whole subject of the power of appointment and removal under the Constitution.

Mr. Madison, (at page 481,) after referring to the distribution of the powers of the Government under the Constitution—into the legislative, executive, and judicial—and claiming that this distribution could not be interfered with by Congress, remarked—

"The legislative powers are vested in Congress, and are to be exercised by them uncontrolled by any other department, except the Constitution has qualified it otherwise. The Constitution has qualified the legislative power by authorizing the President to object to any act it may pass, requiring, in this case, two thirds of both Houses to concur in making a law; but still the absolute legislative power is vested in the Congress with this qualification alone. The Constitution affirms that the executive power shall be vested in the President. Are there exceptions to this proposition? Yes, there are. The Constitution says that in appointing to office the Senate shall be associated with the President, unless in the case of inferior officers, when the law shall otherwise direct. Have we a right to extend this exception? I believe not. If the Constitution has invested all executive power in the President I venture to assert that the Legislature has no right to diminish or modify his executive authority.

"The question now resolves itself into this: is the power of displacing an executive power? I conceive that if any power whatever is in its nature executive it is the power of appointing, overseeing, and controlling those who execute the laws. If the Constitution had not qualified the power of the President in appointing to office by associating the Senate with him in that business, would it not be clear that he would have the right, by virtue of his executive power, to make such appointment? Should we be authorized, in defiance of that direction in the Constitution, 'The executive power shall be vested in a President,' to unite the Senate with the President in the appointment to office? I conceive not. If it is admitted that we should not be authorized to do this I think it may be disputed whether we have a right to associate them in removing persons from office, the one power being as much of an executive nature as the other; and the first only is authorized by being excepted out of the general rule established by the Constitution, in these words, 'The executive power shall be vested in the President.'

"The judicial power is vested in a Supreme Court; but will gentlemen say the judicial power can be placed elsewhere unless the Constitution has made an exception? The Constitution justifies the Senate in exercising a judiciary power in determining on impeachments; but can the judicial power be further blended with the powers of that body? They cannot. I therefore say it is incontrovertible, if neither the legislative nor judicial powers are subjected to qualifications other than those demanded in the Constitution, that the executive powers are equally unabatable as either of the others; and inasmuch as the power of removal is of an executive nature, and not affected by any constitutional exception, it 'is beyond the reach of the legislative body.'"

Again, at page 514:

"However various the opinions which exist upon the point now before us it seems agreed on all sides that it demands a careful investigation and full discussion. I feel the importance of the question, and know that our decision will involve the decision of all similar cases. The decision that is at this time made will become the permanent exposition of the Constitution; and on a permanent exposition of the Constitution will depend the genius and character of the whole Government. It will depend, perhaps, on this decision whether the Government shall retain the equilibrium which the Constitution intended or take a direction toward aristocracy or anarchy among the members of the Government. Hence, how careful ought we to be to give a true direction to a power so critically circumstanced."

Let us look at the views of others of the distinguished members of the First Congress. I will quote the remarks of Mr. Boudinot, of New Jersey, whose memory commands the most profound respect as one of the great men of our early history:

"Let us examine whether it [the power of removal] belongs to the Senate and President. Certainly, sir, there is nothing that gives the Senate this right in express terms; but they are authorized in express words to be concerned in the appointment. And does this necessarily include the power of removal? If the President complains to the Senate of the misconduct of an officer, and desires their advice and consent to the removal, what are the Senate to do? Most certainly they will inquire if the complaint is well founded. To do this they must call the officer before them to answer. Who, then, are the parties? The supreme executive officer against his assistant; and the Senate are to sit as judges to determine whether sufficient cause of removal exists. Does not this set the Senate over the head of the President? But suppose they shall decide in favor of the officer, what a situation is the President then in, surrounded by officers with whom, by his situation, he is compelled to act, but in whom he can have no confidence, reversing the privilege given him by the Constitution, to prevent his having officers imposed upon him who do not meet his approbation. But I have another more solid objection which places the question in a more important point of view. The Constitution has placed the Senate as the only security and barrier between the House of Representatives and the President.

"Suppose the President has desired the Senate to concur in removing an officer, and they have declined, or suppose the House have applied to the President and Senate to remove an officer obnoxious to them, and they determine against the measure, the House can have recourse to nothing but an impeachment, if they suppose the criminality of the officer will warrant such procedure. Will the Senate then be that upright court which they ought to appeal to on this occasion, when they have prejudged your cause? I conceive the Senate will be too much under the control of their former decision to be a proper body for this House to apply to for impartial justice.

"As the Senate are the dernier resort, and the only court of judicature which can determine on cases of impeachment, I am for preserving them free and independent, both on account of the officer and this House. I therefore conceive that it was never the intention of the Constitution to vest the power of removal in the President and Senate; but, as it must exist somewhere, it rests in the President alone."

I may here add the following remark of Mr. Goodhue, (page 555:)

"It moreover appears very clear to me that the Senate, who are a judicial body, ought not to meddle with the business of removal, because they will have prejudged the case if an impeachment should thereafter be made."

Is it not, Mr. Speaker, a most striking comment on the broad and sagacious views of Mr. Boudinot, that he looked into the future with such prophetic clearness? The case of Mr. Stanton is before us almost in name and words, in spirit and substance entirely so. The evils to follow from an act containing the principles of the tenure-of-office act are stated almost as clearly as if the act itself had been before the speaker in written words; and the Senate by the resolutions which they adopted a few days ago, denying the President's right to remove Mr. Stanton, will be placed, should the President be impeached by this House, in the position which it was predicted would be so unfortunate for the cause of "impartial justice." I know it may be said that Senators never could have supposed at the time those resolutions were adopted that this House could be guilty of so great an act of folly as to impeach the President for having removed Mr. Stanton, and I trust that their expectations in this respect will prove to have been well founded. Any other view of the action of the Senate will, I am sure, do injustice to many of the members of that body, if not to all who voted in favor of the resolutions to which I have alluded. The Senators certainly would not have rushed on to judgment in advance could they for a moment have believed that for the act referred to the House would impeach the President.

I add extracts from the remarks of that great man and orator, Fisher Ames, who said:

"The Constitution places all executive power in the hands of the President, and could he personally execute all the laws there would be no occasion for establishing auxiliaries; but the circumscribed powers of human nature in one man demand the aid of others." * * * * "He must therefore have assistants. But in order that he may be responsible to his country he must have a choice in selecting his assistants, a control over them with power to remove them when he finds the qualifications which induced their appointment cease to exist." * * * *

"The executive powers are delegated to the President with a view to have a responsible officer to superintend, control, inspect, and check the officers necessarily employed in administering the laws. The only bond between him and those he employs is the confidence he has in their integrity and talents; when that confidence ceases the principal ought to have power to remove those whom he can no longer trust with safety. If an officer shall be guilty of neglect or infidelity there can be no doubt but he ought to be removed; yet there may be numerous causes for removal which do not amount to a crime. He may propose to do a mischief, but I believe the mere intention would not be cause of impeachment. He may lose the confidence of the people upon suspicion, in which case it would be improper to retain him in service: he ought to be removed at any time when, instead of doing the greatest possible good, he is likely to do an injury to the public interest by being continued in the administration."

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"But why should we connect the Senate in the removal? Their attention is taken up with other important business, and they have no constitutional authority to watch the conduct of the executive officers, and therefore cannot use such authority with advantage. If the President is inclined to shelter himself behind the Senate, with respect to having continued an improper person in office, we lose the responsibility, which is our greatest security: the blame among so many will be lost.

"Another reason occurs to me against blending these powers. An officer who superintends the public revenue will naturally acquire a great influence. If he obtains support in the Senate, upon an attempt of the President to remove him, it will be out of the power of the House, when applied to by the First Magistrate, to impeach him with success; for the very means of proving charges of malconduct against him will be under the power of the officer; all the papers necessary to convict him may be withheld while the person continues in his office.

"Protection may be rendered for protection; and as this officer has such extensive influence it may be exerted to procure the reëlection of his friends. These circumstances, in addition to those stated by the gentleman from Jersey, (Mr. Boudinot,) must clearly evince to every gentleman the impropriety of connecting the Senate with the President in removing from office."

I quote what Judge Benson said, (page 525:)

"I will not repeat what has been said to prove that the true construction (of the Constitution) is, that the President alone has the power of removal; but will state a case to show the embarrassment which must arise by a combination of the senatorial and legislative authority in this particular. I will instance the officer to which the bill relates. To him will necessarily be committed negotiations with the ministers of foreign courts. This is a very delicate trust. The supreme executive officer, in superintending this Department, may be entangled with suspicions of a very delicate nature relative to the transactions of the officer, and such as from circumstances would be injurious to name; indeed, he may be so situated that he will not, cannot give the evidence of his suspicion. Now, thus circumstanced, suppose he should propose to the Senate to remove the Secretary of Foreign Affairs, are we to expect the Senate will, without any reason being assigned, implicitly submit to his proposition? They will not. Suppose he should say he suspected the man's fidelity; they would say we must proceed further, and know the reason for this suspicion; they would insist on a full communication. Is it to be supposed that this man will not have a single friend in the Senate who will contend for a fair trial and a full hearing?

"The President then becomes the plaintiff and the secretary the defendant. The Senate are sitting in judgment between the Chief Magistrate of the United States and a subordinate officer. Now, I submit to the candor of the gentlemen whether this looks like good government? Yet in every instance when the President thinks proper to have an officer removed this absurd scene must be displayed. How much better, even on principles of expediency, will it be that the President alone have the power of removal."

Here, again, we have the present condition of things stated with as much clearness as if it had transpired in 1789.

I shall only add what was stated by one of the most eminent of the great men of his day; and you will observe that he, also, was fully aware of the difficulties which would grow out of the power of removal, if it could be exercised by the President only by and with the advice and consent of the Senate.

Mr. Sedgwick said:

"Suppose the President has a Secretary in whom he discovers a great degree of ignorance or a total incapacity to conduct the business he has assigned him; suppose him inimical to the President, or suppose any of the great variety of cases which would be good cause for removal, and impress the propriety of such a measure strongly on the mind of the President, without any other evidence than what exists in his own ideas, from a contemplation of the man's conduct and character day by day, what, let me ask, is to be the consequence if the Senate are to be applied to? If they are to do anything in this business, I presume they are to deliberate, because they are to advise and consent. If they are to deliberate, you put them between the officer and the President. They are then to inquire into the cause of removals; the President must produce his testimony. How is the question to be investigated? Because, I presume, there must be some rational rule for conducting this business. Is the President to be sworn to declare the whole truth and to bring forward facts? Or are they to admit suspicion as testimony? Or is the word of the President to be taken at all events? If so, this check is not of the least efficacy in nature. But if proof be necessary, what is then the consequence? Why, in nine cases out of ten, where the case is very clear to the mind of the President that the man ought to be removed, the effect cannot be produced, because it is absolutely impossible to produce the necessary evidence. Are the Senate to proceed without evidence? Some gentlemen contend not. Then the object will be lost. Shall a man, under these circumstances, be saddled upon the President, who has been appointed for no other purpose but to aid the President in performing certain duties? Shall he be continued, I ask again, against the will of the President? If he is, where is the responsibility? Are you to look for it in the President, who has no control over the officer, no power to remove him if he acts unfeelingly or unfaithfully? Without you make him responsible you weaken and destroy the strength and beauty of your system."

Such were some of the views urged in favor of the executive power of removal from office. They were met with vigor by gentlemen of ability, some of whom claimed that impeachment must be resorted to if an officer had become unfaithful. Others that the President could remove only in the manner he appointed, that is, by and with the advice and consent of the Senate. The debate, as I have already said, was very thorough and comprehensive, and on what may be considered as the test question it was held that the Constitution conferred the power of removal on the Executive, by a vote of 31 to 19; and on the third reading the bill passed by a vote of 29 to 22. As the Senate then held its sittings with closed doors, we have no reports of the debates in that body, but the bill passed by the casting vote of the Vice President.

Such are the facts which relate to this deeply interesting event in our constitutional history.

Chancellor Kent, speaking of the subject in his Commentaries (the first edition of which appeared forty-two years ago) and of the debate in Congress, to which I have referred, says that the question may be considered "as finally and definitely settled, and there is good sense and practical utility in the construction."

Judge Story, in his Commentaries on the Constitution, (the first edition of which appeared thirty-five years since,) considers this matter very fully, gives the arguments on both sides, and concedes that it will be difficult, perhaps impracticable, after forty years' experience, to change the practice which has existed since 1789. But as "inferior officers," which designation includes the great body of public officers, may be appointed in one of several modes prescribed by the Constitution, he considers the remedy for any abuse of power by the President to be within the control of Congress.

This disposition of the matter has at times been questioned by some of our most distinguished statesmen; but I believe that the conclusion was uniformly arrived at that the question had been fairly settled. Mr. Webster, in the Senate some thirty years ago, while censuring the manner in which the power of removal had been exercised, did not question its existence in the President; and a committee of the Senate, as early as 1826, proposed to reach the matter, not by legislation, but by an amendment of the Constitution. Whether the decision of the Congress of 1789 was wise or not, it is clear that the practical construction of the Constitution has been uniform from that time till the passage of the tenure-of-office act in 1867, the long period of seventy-eight years. Seventeen distinguished persons had, in that long period, occupied the presidential office. Thirty-eight Congresses had followed that of 1789; thousands of officers had been removed by the Presidents during that time and appointments made to fill those and other vacancies; in short, the principle had been recognized by every department of the Government in every possible way. And is all this to go for nothing? Six years, by the statute of limitations in almost every State of the Union, as to personal property, and twenty years as to real estate, disposes of claims on which large rights and often the welfare of individuals and families, and even important interests of communities, depend. According to the usual rules of computation, four business generations have nearly passed away since this question was disposed of after most deliberate consideration. Are we now to overturn it? Are decisions on constitutional questions never to be respected? Is the President, who alone, of all the officers of the Government, is bound by his oath of office "to preserve, protect, and defend the Constitution of the United States," to be judged harshly for seeking to enforce respect to that instrument?

In further answer to the denial that the President ever made removals from office while the Senate was in session, I have to say that he not only uniformly made such removals, but that no other person or body did. The Senate never made them, or gave their "advice and consent" to any removal, and no record of the kind will, I venture to say, be found on the Journals of the Senate.

I will now read copies, from an official source, of messages sent by several of the Presidents to the Senate on making nominations to office. The first will be one of John Adams. It is as follows:

Gentlemen of the Senate:

I nominate Hon. John Marshall, esq., of Virginia, to be Secretary of State in the place of Hon. Timothy Pickering, esq., *removed*.

JOHN ADAMS.

UNITED STATES, *May* 12, 1800.

Mark the language—"removed," not "to be removed," or "whose removal I recommend"—no separate writ of *supersedeas* may have actually issued, but the right to do so existed and it might have been issued. It was only a question between the President and the incumbent whether this should be done or whether the new commission should, when presented, operate as the *supersedeas*. Mr. Webster stated, in the discussion before referred to, that a notice might be given by the President that the removal would take place on a certain day, which is no less a removal than the same act would be on a later or an earlier day.

I give a message by President Taylor, omitting the names:

EXECUTIVE OFFICE, *December* 18, 1849.

To the Senate of the United States:

I nominate —— —— to be marshal of the United States for ——, in place of —— ——, removed.

Z. TAYLOR.

I give another:

To the Senate of the United States:

I hereby nominate —— —— to be deputy postmaster at ——, in place of —— ——, the present incumbent, removed.

FRANKLIN PIERCE.

WASHINGTON, 13 *February*, 1856.

One more, and I have done:

WASHINGTON, *March* 13, 1861.

To the Senate of the United States:

I nominate —— —— to be collector of the customs for the district of ——, in the place of —— ——, removed.

ABRAHAM LINCOLN.

These examples might be multiplied almost indefinitely from the files of the Senate, as all the occupants of the presidential office have pursued a uniform course in this respect.

Let me also refer the House to the language of the commissions issued to the heads of Departments, diplomatic and consular officers, attorneys, marshals, and many other officers of Government, from General Washington's day down to the passage of the tenure-of-office act. The party is appointed (to office, and such is the commission Mr. Stanton holds,) "during the pleasure of the President of the United States for the time being." How could language show more conclusively that the President may at any time remove from office?

There is a strong case on record (and more may, I presume, be found) in which the President made an absolute removal from office during the sitting of the Senate and without even naming any successor till a long time afterward. I refer to the case of a former postmaster at New York. The facts are set forth in Executive Document No. 91 of the House of Representatives, first session of the Thirty-Sixth Congress. The postmaster at New York was believed to be a defaulter, and he was promptly removed by an order, in the nature of a *supersedeas*, issued by President Buchanan, on the 10th of May, 1859, without any communication with the Senate. The present

Judge Holt was then Postmaster General, and seems to have taken the entire direction of the matter. Congress remained in session till the 25th June, but no nomination to the vacant office was made by the President up to that time. It may be said that the public funds were in jeopardy, and the President was therefore bound to make the removal. But it is clear that this of itself would afford no apology for an act unwarranted by the Constitution. The question was one of *power*: he either had or had not the power, and the exercise of it, in the case referred to, was of such marked notoriety, that had there been any person in the land disposed to question it the objection would certainly have been made.

Mr. Madison's views on this subject were freely expressed in his later days, and after his long experience of the operations of the Government were entirely in conformity with those he entertained in 1789. They will be found in his letter to John M. Patton, dated March 28, 1834.

In a letter to Mr. Coles, of October 15, 1834, he said, page 464:

"The claim on constitutional ground to a share (by the Senate) in the removal, as well as appointment of officers, is in direct opposition to the uniform practice of the Government from its commencement. It is clear that the innovation would not only vary essentially the existing balance of power, but expose the Executive occasionally to a total inaction, and at all times to delays fatal to the due execution of the laws."

General Jackson's views were given on his protest to the Senate of April 15, 1834. I present brief extracts from this document:

"The whole executive power being vested in the President, who is responsible for its exercise, it is a necessary consequence that he should have a right to employ agents of his own choice to aid him in the performance of his duties and to discharge them when he is no longer willing to be responsible for their acts. In strict accordance with this principle the power of removal, which, like that of appointment, is an original executive power, is left unchecked by the Constitution in relation to all executive officers, for whose conduct the President is responsible, while it is taken from him in relation to judicial officers, for whose acts he is not responsible."

After having referred to the debate in the Congress of 1789, he said:

"Here, then, we have the concurrent authority of President Washington, of the Senate, and the House of Representatives, members of whom had taken an active part in the Convention which framed the Constitution, and in the State conventions which adopted it, that the President derived an unqualified power of removal from that instrument itself, which is beyond the reach of legislative authority. Upon this principle the Government has now been steadily administered for about forty-five years, during which there have been numerous removals made by the President, or by his direction, embracing every grade of executive officers from the heads of Departments to the messengers of bureaus."

This question has also been passed upon by the judiciary, and I refer to this very briefly.

In the case of Hennen, reported in 13 Peters' Supreme Court Reports, page 259, the Supreme Court of the United States fully recognized the doctrine established by the Congress of 1789, and we thus have a substantial agreement on this subject between all branches of the Government, for the long period of seventy-eight years, from 1789 to 1867.

I have thus, I think, established the statement made in the outset—that the chairman of the committee, Mr. STEVENS, is entirely wrong in claiming that the President never removed from office during the sitting of the Senate unless with the consent of the Senate—and have shown that the President alone *makes removals*, the Senate taking no part whatever in them, but only approving or rejecting *nominations to fill offices* which the President may send to them, and that this will be proved by reference to the Journals of the Senate. If I am wrong in my position it is due to the importance of the subject that the committee should, before this discussion closes, state the facts on which they base their extraordinary statement.

We now come to a change in the policy of Congress by the passage of the tenure-of-office act in 1867. The first clause of that act provided—

"That every person holding any civil office to which he has been appointed by and with the advice and consent of the Senate, and every person who shall hereafter be appointed to any such office and shall become duly qualified to act therein, is, and shall be, entitled to hold such office until a successor shall have been in like manner appointed and duly qualified, except as herein otherwise provided: *Provided*, That the Secretaries of State, of the Treasury, of War, of the Navy, and of the Interior, the Postmaster General, and the Attorney General, shall hold their offices respectively for and during the term of the President by whom they may have been appointed, and for one month thereafter, subject to removal by and with the advice and consent of the Senate."

This act was passed after a long debate in both Houses, especially in the Senate, and was met by a veto message from President Johnson, sent to the Senate on the 2d of March, 1867, in which he reviewed the history of the executive power of removal with great clearness and ability, and contended that the proposed statute would be a violation of the Constitution as it had been understood and acted upon by all the departments of Government since 1789. The bill, notwithstanding the veto, became a law by a two-thirds vote of both Houses of Congress, and it thus stands on the statute-book.

As Mr. Stanton, the Secretary of War, had been appointed by Mr. Lincoln, and held his office without any new commission having been issued to him by President Johnson, the latter claimed that Mr. Stanton's case was within the very terms of the proviso in the act of 1867, and deeming that the public interests required a change in the War Department he suspended Mr. Stanton from office (after his refusal to resign) on the 12th of August, 1867, and

appointed General Grant Secretary of War *ad interim*.

It has been said that the proviso in the tenure-of-office act does not cover the case of Mr. Stanton, for the alleged reason that Mr. Johnson is serving out the "term" of office of Mr. Lincoln. That this construction does not meet the spirit of the proviso, by which it was clearly intended that the President should always have a Cabinet of his own choice, is so clear to every candid mind that it does not admit of question. It is entirely inconsistent with the discussion had in Congress, where no such forced construction was hinted at. The Constitution says of the President, "he shall hold his office during a term of four years." The office and the term, be it more or less, evidently and of necessity go together. Can it be said of any man that he holds a term of office after death? Or of any person that he holds an office, and that it is the "term" of a person who is dead? That it would have been the term of such other person had he lived is quite true, but death severed his connection with all earthly things. The "term" is no longer his. Whatever was left of it passed to his successor.

If the discussion referred to be carefully examined it will be seen that several Republican Senators stated unhesitatingly that the act was not a party measure; that they desired to respect the office and the rights of the President; that they took it for granted that no person fit to occupy the position of a Cabinet minister would hold the place when his relations were unfriendly and hostile to the President, and also that they considered it important that there should be a cordiality of feeling and an agreement as to matters of State policy between the President and those who are his confidential advisers. (See the remarks in the Congressional Globe of 1866–67, of Senators HOWE, FESSENDEN, EDMUNDS, SHERMAN, WILLIAMS, FOWLER, and others. I have no time to read them, and can only refer to them.) The idea that the act could be so construed as to place it beyond the power of President Johnson to remove members of his Cabinet, not appointed by him, is entirely at variance with the views expressed during the discussion, and if we are to be governed, as I do, what many honorable Senators said as to their motives, no such thing was thought of or intended.

With a sincere desire, as it seems to me, to avoid any collision or question with Congress, the President submitted to the Senate by his message of the 12th December, 1867, all the papers connected with the removal of Mr. Stanton, and a statement of the reasons which led him to the performance of that duty. In this document the President stated that when the tenure-of-office bill was before him he consulted his Cabinet in regard to it, and that every member of that body advised him that the law was unconstitutional—the condemnation of Mr. Stanton being "the most elaborate and emphatic." He referred, as the President states, "to all the arguments on the subject, and added the weight of his own deliberate judgment, and advised me that it was my duty to defend the power of the President from usurpation, and to veto the law." The Senate did not agree with the President as to the sufficiency of his reasons for suspending Mr. Stanton and he was consequently reinstated in office. Having failed to secure Mr. Stanton's removal in this way, and Mr. Stanton not having resigned, as some of his friends expected him to do, the President, treating the tenure-of-office act as unconstitutional, *removed him* absolutely under his constitutional executive authority, and, under the act of 1795, designated Adjutant General Thomas Secretary of War *ad interim*, and there the matter now stands, Mr. Stanton having refused to surrender the office to General Thomas. The Senate, having been informed of this action, thereupon adopted the resolutions of disapproval to which I before referred. For this act of removal it is proposed that this House do now impeach the President.

President Johnson stands before you charged with no offense against good morals, with no want of personal or official integrity or capacity, with no inattention to or neglect of duty, but simply with having ventured to differ from Congress as to the constitutionality of the tenure-of-office act, a difference which all the facts show was a conscientious one, and having acted accordingly.

In his construction of this act he is supported, as I hope I have already shown, by the uniform course of all departments of the Government from 1789 to 1867; and in the debate in the Senate on the act of 1867 it was admitted by some of the friends of the bill, and denied by all its opponents, that its constitutionality would be questioned and disputed. That the President was bound by his oath of office, of such marked significance, to defend his power from usurpation, and to veto the law was particularly urged upon him by Mr. Stanton, who still claims the administration of the War Office.

Is the President of the United States for such a cause and under such circumstances to be impeached? Are we to resort to this extraordinary remedy, one which would draw upon us the comments of the world, because Congress and the President differ as to the constitutionality of a certain statute, when the Supreme Court could in a few weeks hear and finally dispose of the question? What is the world to think of constitutional government, when he who has been specially chosen to maintain it is struck down by the House of Representatives while gallantly standing up in its defense?

Some gentlemen may consider this a very

pleasant political episode, and think it will work out well for party purposes. But let me warn them that years hence, this thing, if now accomplished, will return to shame and to plague them. Impeachment, if it now succeed, will become a favorite political remedy for a strong legislative majority in many of our State Legislatures, when the greater part of them happen to differ from their executive on public matters, and once taught how the power is to be used the use will not readily be abandoned. Like some burden once imposed for some alleged temporary purpose, it is easily fastened upon community, while years of effort are necessary to remove it. What is the end to be gained? The decision, if adverse to the President in this case, will not settle the law as to other incumbents of the executive office. The question will still remain to be settled in the future. Should the Senate find the President guilty of a violation of the law, they surely would not undertake to remove him from office for venturing to differ from Congress on a doubtful question of law. This would virtually be claiming infallibility for themselves. I am quite aware that there are persons who look upon this question as more of a political than a judicial question, but I am sure that the large number of gentlemen of high character in the Senate who will try this matter if it reaches them, will act the part of impartial judges, feeling conscious that they are accountable not to any political party, but to the cause of truth and justice here, and hereafter to a higher tribunal whose administrations are infallible.

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